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AZ CORP COMMISSION
BEFORE THE ARIZONA CORPORATION COMMISSION

ORIGINAL

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER CO., INC., AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-03514A-13-0111

Arizona Corporation Commission

DOCKETED

MAR 10 2014

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER CO., INC., AN
ARIZONA CORPORATION, FOR
AUTHORITY TO: (1) ISSUE EVIDENCE
OF INDEBTEDNESS IN AN AMOUNT
NOT TO EXCEED \$1,238,000 IN
CONNECTION WITH INFRASTRUCTURE
IMPROVEMENTS TO THE UTILITY
SYSTEM; AND (2) ENCUMBER REAL
PROPERTY AND PLANT AS SECURITY
FOR SUCH INDEBTEDNESS.

DOCKET NO: W-03514A-13-0142

INTERVERNOR POST-HEARING BRIEF
03/10/14

Due process is the principle that the government must respect all of the legal rights that are guaranteed an individual by the Constitution and the Bill of Rights. This principle gives individuals the ability to enforce their rights against violations by the government. The Due Process Clause states a State cannot "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. A rate increase is a deprivation of property. Due process of law requires that such deprivation be preceded by notice and an opportunity for hearing appropriate to the nature of the case. **Carlson v. Ariz. State Pers. Bd.**, 214 Ariz. 426, 430-31, ¶¶ 14-15, 153 P.3d 1055, 1059-60 (App.2007) (citation and internal quotation omitted). Additionally, "[p]arties must be afforded reasonable notice to provide an opportunity to prepare for a hearing." **Hendricks v. Arizona Dept. of Economic Sec.**, 270 P.3d 874, 876 (See A.R.S., § 41-1063(C) (2004)).

ENTITLEMENT TO NOTICE: AAC R14-3-109

The Arizona Administrative Code, "AAC", provides "Rules of Practice and Procedure" that the Arizona Corporation Commission, "ACC", is to follow. Rule R14-3-109 reads in part, "Notice of the

1 place, date and hour of the hearing will be served by the Commission at least ten days before the time
2 set therefore, unless otherwise provided by law or as ordered by the Commission." Therefore, timely
3 notice of the September 25, 2013 Phase 1 Hearing would have been September 15, 2013. According to
4 Payson Water Company's own affidavit, the earliest they mailed notice to any community was
5 September 18, 2013.¹

6
7 **BREACH OF NOTICE:**

8 Kathleen M. Reidhead, "KMR", a part-time resident of Deer Creek Village, "DCV", received her
9 notice on the evening of Friday, September 20, 2013, only 5 days prior to the Phase 1 Hearing². This late
10 delivery essentially guaranteed that ratepayer intervention could not possibly occur during Phase 1, as
11 set forth via AAC R14-3-105. KMR was not an original party to the action. R14-3-105 allows a person to
12 Intervene and become a party. R14-3-105(A) states, "Persons, other than the original parties to the
13 proceedings, who are directly and substantially affected by the proceedings, shall secure an order from
14 the Commission or presiding officer granting leave to intervene before being allowed to participate."
15 The application to intervene must be served and filed by an applicant at least five days before the
16 proceeding is called for hearing. Accordingly, an applicant must have filed by September 20, 2013 to
17 intervene in Phase 1 of this case. Other than intervening, a citizen may appear. "A person so
18 appearing shall not be deemed a party to the proceedings.", per R14-3-105(C). Accordingly, a citizen
19 appearing does not have the same procedural rights.

20
21 **LEVEL OF BREACH:**

22 The Phase 1 Hearing establishes the underlying facts of this case. The Phase 1 Hearing was on
23 September 25, 2013. The Phase 1 Decision #74175 was issued on October 25, 2013. The Phase 2
24 Hearing set the appropriate rates based upon the facts in Phase 1. The Phase 2 Hearing began on
25 January 13, 2014. The underlying facts established during Phase 1 cannot be challenged during Phase 2.
26 Therefore, Phase 1 was the only appropriate time to debate the relevant facts that are impacting the
27 setting of rates in Phase 2.

28
29 The due process rights of KMR were violated because she was unable to intervene during the
30 Phase 1 Hearings due to late notice. There are serious irregularities noted in these proceedings before
31 the ACC, as well as newly discovered material evidence which could not have been discovered and
32 produced at the Phase 1 Hearing. Additionally, the Phase 1 Decision is not justified by the evidence that
33 was produced during the Phase 2 portion of the case. Therefore, the ACC should rescind that Decision
34 without further delay.

35
36 Per Procedural Order dated August 26, 2013³, the two cases were consolidated and a
37 Procedural Conference was scheduled for September 4, 2013. The ACC Staff, "Staff", and Payson
38 Water Company, "PWC", had forged an agreement to move forward with a bifurcated and expedited
39 Phase 1 portion of the case, as evidenced by the archived video from the September 4, 2013 Procedural

¹ See Affidavit/Certification-Customer/Public Notice filed on 10/30/13, Document #149206.

² See Exhibit KMR-1, Page 2, lines 4-9.

³ See Document #147666, Procedural Order dated August 26, 2013.

1 Conference⁴, before any ratepayers had been notified of the matter. Staff Attorney Robin Mitchell
2 expressed a misstatement of the facts of the case, as we now know them, in support of the Company's
3 request, as described in detail under MISREPRESENTATION #1 on page 5. On September 18, 2013, the
4 ACC Staff filed a Staff Report in Phase 1, recommending approval of a \$275,000 expedited WIFA loan,
5 subject to certain conditions.⁵ This all took place prior to the Public Notice being delivered to the
6 ratepayers.

7
8 The breach of notice effectively silenced any opposition voice towards the proposed financing
9 and building of the Town of Payson "TOP"/Mesa del Caballo, "MdC", interconnect pipeline project⁶,
10 which was later authorized by ACC Decision 74175 on October 25, 2013. The ratepayers should have
11 been afforded their due process rights to intervene in the entire case as prescribed under AAC R14-3-
12 105, and if they had been, there likely would have been a different Decision rendered with regard to the
13 TOP/MdC interconnect pipeline project that was authorized in Phase 1 by the Commissioners at the
14 October 16, 2013 Open Meeting. Further, PWC's attorney misrepresented the facts of the matter to
15 the Commissioners at that meeting, as documented in Exhibit KMR-5, (page 6 lines 29-35).

16
17 **THE RATEPAYERS ARE HARMED:**

18 KMR is directly and substantially affected by the proceedings. Therefore, she should have been
19 allowed to intervene. **Miller v. Arizona Corporation Commission, 251 P.3d, 400, 403 (2011)**. She
20 received less than five days notice before the Phase 1 Hearing, and therefore, was unable to intervene in
21 its proceedings. Even if she had time to intervene, she did not have adequate time to prepare for such
22 proceedings.

23
24 Ratepayers from the 7 communities outside of MdC have been told that they would not be
25 asked to pay for any part of the TOP/MdC interconnect pipeline project⁷. However, the Phase 1 Decision
26 issued by the ACC has adopted the 09/18/13 Staff Report⁸, which includes the following language, "That
27 the Commission affirm in the Phase 1 Order its intent to process PWC's pending rate case prior to the
28 end of 2014, with a final Decision resulting in a debt service coverage ("DSC") ratio of 1.2 or greater for
29 the resulting WIFA loan approval."⁹ That language arises from WIFA advising "that PWC's financial
30 capability would be enhanced if the Commission would commit to completing the Company's
31 permanent rate case by the end of 2014, and provide rates sufficient to achieve a DSC of 1.2 or
32 greater."¹⁰ This indicates that it was known that a certain level of revenue would be needed and sought
33 in the Phase 2 permanent rate case to satisfy the WIFA loan requirement. That revenue is currently
34 being sought from all 8 of the systems served by PWC, as the Phase 2 rate design includes only one
35 consolidated rate structure for all 8 water systems that is currently agreed to by Staff and PWC. The

⁴ See the transcript from the 09/04/13 Procedural Conference posted on 09/18/13, Document #148176, pgs. 4-18.

⁵ See Exhibit S-5, Decision No. 74175, page 3, lines 25-26.

⁶ See testimony of Kathleen Reidhead at Phase 2 Hearing on 02/07/14, Document #151334, page 27/237, lines 18-25 and page 28/237, lines 1-9. Also available @ 00:26:55 - 00:28:10 of the archived video.

⁷ See Exhibit KMR-2, page 7, lines 16-40 and page 8, lines 1-5.

⁸ See Document #148180, posted on 09/18/13.

⁹ See Exhibit S-5, page 10, lines 18-20.

¹⁰ See Exhibit S-5, Page 8, lines 2-5.

1 rate design must provide adequate revenue to cover that DSC ratio, as required by the language in the
2 Phase 1 Decision. Accordingly, the ratepayers are greatly harmed by the significant increase in rates
3 that is required by the Phase 1 Decision.
4

5 **WOULD THE OUTCOME HAVE BEEN DIFFERENT IF RATEPAYERS HAD RECEIVED TIMELY**
6 **NOTICE?**

7 Absolutely. If KMR had been permitted to Intervene in the entire case, she would have shown
8 the numerous discrepancies in data that the Company has submitted that do not support their claim
9 that the TOP/MdC interconnect pipeline project warranted expedited handling or approval. Upon
10 thorough examination of the evidence during Phase 2, it has become clear that PWC has not presented
11 proof that expensive water hauling exercises conducted at MdC from 2009-2013 were necessary or
12 prudent. In fact, the evidence does not support that story at all. False claims were made by the
13 Company to the ACC in November 2009¹¹ to establish support for their long range goal to acquire access
14 to Cragin Reservoir water resources, as detailed in the PWC DECEPTION #2 section on page 6 of this
15 brief. This evidence and other evidence produced during Phase 2 (and described in detail throughout
16 pages 5-17 of this brief) casts grave doubt on whether PWC's actions are compatible with the public
17 interest and with the proper performance of their duties as a public service Corporation. There is the
18 appearance of serious improprieties, including deception, by PWC in the record of this case. There are
19 far too many accounting and data irregularities noted in the evidence to accept the data provided by the
20 Company as sound and used by ACC Staff in making the rate design proposals. The Intervenor has
21 directed attention to these irregularities during the Phase 2 portion of the case and would certainly have
22 influenced a different Phase 1 Decision if they had been permitted to participate in that Phase of the
23 case. The Phase 1 Decision is not justified by the evidence that was produced during the Phase 2
24 portion of the case.
25

26 **REMEDY:**

27 The proper remedy for the violation of notice would be to reverse the Phase 1 Decision
28 impacting the setting of rates, as per A.R.S. §40-252, and redo the proceedings consistent with the Due
29 Process Clause. **Hendricks v. Arizona Dept. of Economic Security, 270 P.3d 874, at 879 (2012).**
30

31 The ACC should abandon the current Phase 2 Staff proposal and new rates should be set based
32 upon actual cost of service for each of the communities with similar costs and similar hydro-geological
33 and climate conditions, in accordance with A.R.S. §40-361. The financial records of the Company should
34 be examined thoroughly for the period 2001-2013 to investigate the unusual (nearly 600%¹²) increase in
35 Miscellaneous Expenses discovered during this case, before any new rates are made. And the ACC
36 should contact the Attorney General and cooperate with a criminal investigation into the Company's
37 practices to assure that the ratepayers are not being deceived and defrauded by the Company, in
38 pursuit of Cragin water resources.
39
40

¹¹ See Exhibit A-17. Further detail provided under PWC DECEPTION #1, #2 & #3 of this brief, pages 5 & 6.

¹² See Exhibit SN-5, Exhibit A.

1 **CASE SUMMARY:**

2 The early history of this case reveals that the ACC Staff, "Staff", and Payson Water Company,
3 "PWC", had already forged an agreement to move forward with a consolidated, bifurcated and
4 expedited Phase 1 portion of the case, as evidenced by the archived video from the September 4, 2013
5 Procedural Conference¹³, before any ratepayers had been notified of the matter.

6
7 **MISREPRESENTATION #1:**

8 It is clear, based on review of that video, that Staff Attorney Robin Mitchell expressed a
9 misstatement of the facts of the case, as we now know them, when she stated to Judge Nodes, "I'd just
10 like to add, one of the reasons that Staff is willing to accommodate the Company's request is because
11 there really is a need for water to that Community. You know, you sat in some of the complaint dockets
12 from that area. And this has been a problem that is 20 years in the making. And I don't think they could
13 go another season hauling water. And so this really is an optimum solution for the Company and for the
14 ratepayers there. And this is one of the reasons why Staff is willing to sort of go out on a limb to
15 expedite this process."¹⁴

16
17 Ms. Mitchell's statement about "20 years in the making" is refuted by PWC Exhibit A-17, Exhibit
18 A, which is a letter from PWC's Robert Hardcastle to Staff Engineer Del Smith dated November 1, 2009,
19 page 2, which shows that water production in Mesa del Caballo, "MdC" was stable in the preceding
20 years of 2006-2009 at between 62 gpm and 58.8 gpm. Mr. Hardcastle states, "However, water
21 production measured on July 30, 2009 dropped by nearly 27% to 44.9 gpm. Since at least 2002 the
22 Company has not seen such a dramatic water production change at MdC as that which occurred in the
23 summer months of 2009."¹⁵

24
25 **PWC DECEPTION #1:**

26 Please note that Exhibit A-17, Exhibit 2 attached to Mr. Hardcastle's letter shows gallons
27 pumped (thousands) for July 2009 to be 1,181 which is the highest level shown over the previous 13
28 month period, as well as 1,022 (thousands) for June 2009 being the 2nd highest and 1,017 (thousands)
29 for May 2009 being the 3rd highest level pumped over the previous 13 month period. This data is
30 inconsistent with his statement that the production dropped by nearly 27% in July 2009. Even if the
31 gallons per minute rate had fluctuated lower, the Company was still able to produce greater quantities
32 of water during July 2009 than during the previous 13 month period. One has to wonder why Staff did
33 not question these inconsistencies in the data presented by PWC. Further, upon closer examination of
34 Exhibit 4 attached to Exhibit A-17, the data shows that 3 wells had significantly reduced production,
35 while 2 others had significantly increased production. One has to wonder why Staff did not require PWC
36 to examine the wells that were reported as significantly reduced production for certain anomalies, such
37 as scale buildup, clogged screen and other problems typically known to cause lower-yielding well
38 production as described in Exhibit KMR-3 attached Exhibit KMR-F.

¹³ See the transcript from the 09/04/13 Procedural Conference posted on 09/18/13, Document #148176, pgs. 4-18.

¹⁴ See the transcript from the 09/04/13 Procedural Conference posted on 09/18/13, Document #148176, page 11, lines 21-25 & page 12, lines 1-6. Also available @ 00:09:36 - 00:10:18 of the archived video.

¹⁵ See Exhibit A-17, Exhibit A, Robert Hardcastle letter to Del Smith, page 2, lines 27-30.

1 **PWC DECEPTION #2:**

2 Closer examination of this data shows the 3 wells showing reduced production are wells
3 identified as 55-556158, 55-588967 & 55-580229. The ADWR well registry shows well #55-556158
4 belonging to Gerald, Janice & Craig Lash located in Lakeside, AZ (a small town in Navajo County) since
5 2002, well #55-588967 belonging to US Geological Survey located in Cochise County, AZ (listed as an
6 illegal well) and well #55-580229 belonging to Shell Oil Products US, located in Phoenix, AZ & abandoned
7 on 01/23/09. It appears that Mr. Hardcastle used false well information for claims made on Exhibit 4.
8 None of these wells are listed as wells the Company was using in 2012, per the 2012 Annual Report - see
9 Revised Water Company Plant Description for MdC¹⁶. However, on the PWC 2010 Annual Report¹⁷, well
10 55-556158 appears, showing production of 13 gpm (higher than 11.2 gpm in 2008 and significantly
11 improved from 2.8 gpm reported on Exhibit A-17, Exhibit 4 in 2009) and well 55-588967 appears,
12 showing 11 gpm (only slightly lower than 12.0 gpm in 2008 and significantly improved from 1.2 gpm
13 reported on Exhibit A-17, Exhibit 4 in 2009), and well 55-580229 is not listed on the 2010 Annual Report.
14 One has to wonder why no follow up was conducted by ACC Staff Engineers, as even if the falsely stated
15 ownership of the wells was not known, 2 of the 3 wells appeared to have returned to their previous
16 production capacities by 2010 (based on PWC Annual Reports)¹⁸. Wouldn't anybody wonder why the
17 3rd well (55-580229) had disappeared altogether from the Company records in 2010 and all 3 wells had
18 disappeared from the Company records by 2012? At any rate, this is clear evidence that deceptive data
19 was supplied by Mr. Hardcastle to the ACC to claim a water shortage crisis had begun in MdC and
20 apparently, the data was never scrutinized closely enough to uncover these discrepancies.

21
22 **PWC DECEPTION #3:**

23 Additionally, Exhibit A-17, Exhibit A indicates that it was known that the Town of Payson was
24 planning on building their new water treatment plant on Houston Mesa Road immediately southeast of
25 MdC¹⁹. So it was within the Company's knowledge *at that time* (November 2009) that an interconnect
26 pipeline to cross the road would be convenient "and avoid operating individual treatment plants for the
27 Houston Mesa Road communities". This shows that the Company's claim that "a solution has just kind
28 of popped into the Company's lap" was false when it was stated by PWC Attorney Jay Shapiro at the
29 September 4, 2013 Procedural Conference²⁰ to justify expedited handling of the TOP/MdC interconnect
30 pipeline financing request. Further, the interconnection was also mentioned in Decision 71902²¹ issued
31 on September 28, 2010, nearly 3 years prior.

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¹⁶ See Exhibit SN-2, Exhibit P, page 205/238. *Footed as "well numbers administratively corrected as of 09/09/13" .

¹⁷ See Exhibit SN-2, Exhibit N, page 91/238.

¹⁸ See Exhibit SN-2, Exhibit N, page 91/238.

¹⁹ See Exhibit A-17, Exhibit A, page 7/8 (near the middle of the page).

²⁰ See testimony of Jay Shapiro at Procedural Conference on 09/04/13, Document #148176, page 5/23, lines 3-5.
Also available @ 00:01:20 - 00:01:29 of the archived video.

²¹ See Exhibit S-1, page 6, lines 15-18.

1 **CASE SUMMARY CONTINUATION:**

2 On September 18, 2013, ACC Staff filed a Staff Report in Phase 1, recommending approval of a
3 \$275,000 expedited WIFA loan, subject to certain conditions.²² It should be noted that this took place
4 prior to the Public Notice being delivered to the ratepayers. Ratepayers scrutinize details of these
5 matters very closely, as evidenced in this case, as they have a long-term vested economic interest at
6 stake. The Public Notice issued was inaccurate, stating DCV as part of the former C & S System and
7 Gisela as part of the former United Utilities System and publishing incorrect details as to the current
8 rates and the Company's proposed rate increase²³. More importantly, the fact that the case was
9 consolidated, bifurcated and Phase 1 expedited without proper notice given is the most egregious
10 violation of the ratepayers' rights to due process.

11
12 **PWC DECEPTION #4:**

13 The premise for the expedited Phase 1 approval of the TOP/MdC interconnect pipeline was to
14 avoid water hauling exercises this coming summer²⁴, yet the record shows no clear evidence that the
15 Company has definitively established that water hauling exercises were absolutely necessary or prudent
16 over the last 5 summers. In fact, an analysis made by Intervenor Suzanne Nee of the Water Use Data
17 reported by PWC on their Annual Reports from 2006-2012 shows²⁵ trends in MdC of gallons sold
18 decreasing by 35%, gallons purchased decreasing 79%, while gallons pumped increasing 99.8%. This is
19 inconsistent with the story that PWC tells of ongoing serious water shortages in MdC necessitating the
20 need for hauled water. The record shows that the PWC 2012 Annual Report of Water Use Data for MdC
21 indicates no need for hauled water²⁶ except in June, as gallons pumped exceeded gallons sold in every
22 month except June. Also, Water Use Data for MdC is completely missing from the PWC 2011 Annual
23 Report²⁷, which is highly irregular. At the very minimum, there is reason to doubt the accuracy of any
24 Company provided data to support their story. ***PWC admitted*** that the Water Use Data figures provided
25 in the 2012 annual report for East Verde Park, "EVP", were both incomplete and incorrect²⁸, via their
26 response to questions posed by Intervenor Tom Bremer. These serious irregularities in the data
27 provided by PWC (as noted in Exhibit A-17, Exhibit 4 and elsewhere) should be strongly weighed as
28 evidence that PWC may have engaged in efforts to deceive and defraud the ratepayers, as numerous
29 other unusual activities are noted and further described in Exhibit KMR-5, page 2, lines 33-38 and page
30 3, lines 1-13 and the attached Exhibit KMR-J. These actions may rise to the level of predatory business
31 practices and may be unlawful as per A.R.S. §40-1522 or other statutes. The entire basis for the
32 expedited handling of the TOP/MdC interconnect pipeline was the water hauling crisis, which is based
33 upon the word of the Company, which has been shown to be unreliable.

34
²² See Exhibit S-5, Decision No. 74175, page 3, lines 25-26.

²³ See Exhibit KMR-1, page 2, lines 11-22 and Affidavit/Certification-Customer/Public Notice filed on 10/30/13, Document #149206.

²⁴ See testimony of Jay Shapiro at 09/04/13 Procedural Conference, Document #14817, page 5/23, lines 23-25 & page 6/23, lines 1-3. Also, see testimony of Jason Williamson at Phase 2 Hearing on 02/05/14, Document #151329, page 17/236, lines 18-22. Also available @ 00:13:55 - 00:14:10 of the archived video.

²⁵ See Exhibit SN-2, page 1, lines 32-43 and attachments Exhibit A, B & C.

²⁶ See Exhibit SN-2, page 2, lines 1-15 and attached Exhibit P, Water Use Data for MdC in 2012 (page 216/238).

²⁷ See Exhibit SN-2, Exhibit O (pages 125-176/238).

²⁸ See Exhibit A-16, page 6, lines 11-17.

1 **MISREPRESENTATION #2:**

2 Furthermore, PWC did not take action to explore other less expensive alternatives to water
3 hauling over the last 5 years, ***which cripples the "extraordinary relief" argument*** the Company claimed
4 during the September 4, 2013 Procedural Conference²⁹. PWC has had 5 years to attempt various other
5 relief measures to alleviate the high cost of water hauling, but has made no effort, as far as the record
6 shows. KMR gave testimony to the actual cost of drilling a well³⁰, which would be in the range of \$8,000
7 to \$12,000, per an estimate she received in early 2013. Further, PWC submitted invoices on Exhibit A-
8 14, attached Exhibit JW-RB1 showing the costs of 3 wells drilled in MdC at between \$6,505.83 and
9 \$8,309.66 in 1996. Since 2011, other new private wells have been drilled in MdC, 9 wells have been
10 completed³¹, and all of those successfully obtained water at depths ranging from 120 to 276 feet. So it is
11 highly objectionable that PWC has spent between \$52,000³² to \$88,000³³ per summer hauling water to
12 MdC and East Verde Park, "EVP" over the last 5 years when they could have drilled 6-10 new wells ***each***
13 ***year*** for a similar amount of money. Any responsible Company would have done this simple
14 cost/benefit analysis and acted prudently to mitigate damages to its customers. One has to wonder why
15 PWC did not.

16
17 **MISREPRESENTATION #3:**

18 PWC expressed an interest in pursuing Cragin water in April 2008 via a letter from Robert
19 Hardcastle to the Town of Payson³⁴, a full 15 months before he claims the wells in MdC dramatically
20 declined production³⁵ (which we know now were not even PWC's wells or wells anywhere near MdC). In
21 late 2009 Mr. Hardcastle commissioned an Engineering Study by Zonge Engineering & Research
22 Organization, Inc. to investigate whether drilling a new well or deepening existing wells in MdC had
23 potential as an interim water supply.³⁶ However, Mr. Hardcastle advised the ACC in November 2009
24 that PWC wished to pursue Cragin Reservoir water as a long term solution to the exclusive groundwater
25 supply³⁷, ***even before the Engineering Study was conducted or the results were known***. Attached to
26 Exhibit A-17 as Exhibit C is a letter dated March 30, 2010 from a Registered Geologist from Southwest
27 Water Consultants, Inc., interpreting the completed Engineering Study which states, "Based on the local
28 hydrogeologic conditions supported by the geophysical cross-sections, the yield of wells designed to be
29 production wells completed to depths up to 500 feet will be in the 10 to 25 gpm range".³⁸ Despite this
30 positive report indicating additional new wells or deepening existing wells would provide additional
31 supplies of water, PWC drilled none.

32
²⁹ Per PWC Attorney Jay Shapiro at the Procedural Conference on 09/04/13, Document #148176, page 4/23, lines 1-25 and page 5/23, lines 1-2. Also available @ 00:01:06 - 00:02:10 of the archived video.

³⁰ See testimony of Kathleen Reidhead at Phase 2 Hearing on 02/07/14, Document #151334, page 20/237, lines 1-13. Also available @ 00:16:42 - 00:18:40 of the archived video.

³¹ See Exhibit KMR-5, Supplement to pre-filed Testimony on 01/27/14, attached Exhibit KMR-G.

³² See Exhibit A-15, Rejoinder Testimony of Jason Williamson, page 14, lines 22-23.

³³ See Exhibit A-14, Rebuttal Testimony of Jason Williamson, page 9, lines 17 & 18.

³⁴ See Exhibit KMR-4, Supplement to pre-filed Testimony dated 01/07/14, Exhibit KMR-H.

³⁵ See Exhibit A-17, Exhibit A, Robert Hardcastle letter to Del Smith, page 2, lines 27-30.

³⁶ See Exhibit A-17, Exhibit A, Robert Hardcastle letter to Del Smith, page 4, lines 12-17.

³⁷ See Exhibit A-17, Exhibit A, Robert Hardcastle letter to Del Smith, pages 6-7.

³⁸ See Exhibit A-17, Exhibit C, Stephen D. Noel letter to Bob Hardcastle, page 2.

1 **CASE SUMMARY CONTINUATION:**

2 Instead, on March 31, 2010 (one day later), PWC filed an application for the emergency
3 implementation of a water augmentation tariff for its MdC system and was granted an ACC Decision on
4 September 28, 2010, Decision 71902. One has to wonder why the ACC would approve a water
5 augmentation tariff for MdC after a Registered Geologist from Southwest Water Consultants had given
6 specific recommendations on where new wells could be drilled or existing wells deepened to obtain
7 additional sources of water production in MdC³⁹ and the Company had not pursued those
8 recommendations.
9

10 One also has to wonder why the ACC would approve a water augmentation tariff for MdC that
11 was as injurious as that authorized by Decision 71902, Exhibit A⁴⁰. As stated by Intervenor Tom Bremer
12 during his testimony on 02/07/14, "I found out during this Hearing that this, that what was proposed by
13 Payson Water Company for East Verde Park in their December 6th filing is essentially the same that was
14 imposed at Mesa del Caballo. And this, in my mind, goes a long way of answering why there was such
15 frustration and, I will say, outrage, from people who have told me, some residents from MdC have told
16 me, with respect to the curtailment plan and the fines and things of that nature. And, frankly, I am a bit
17 disappointed that that type of curtailment plan was authorized by the Corporation Commission. I would
18 have thought that something that egregious would not sail through." ⁴¹ Tom describes examples of
19 unreasonable curtailment criteria, such as "a part-time EVP resident and PWC customer who uses no
20 water at all in a given month is in violation of curtailment criteria for using any amount of water,
21 however small, in the subsequent month, during the curtailment period. It is not possible to reduce
22 water consumption by 30 to 50 percent of zero." ⁴² An additional example is described of a resident
23 family of four that, to comply, would result in that family not being able to use more than 28 gallons of
24 water per day, which, for a family of four does not even support basic needs for hygiene⁴³. This
25 curtailment plan appears grossly unfair, as pointed out by Tom Bremer, and "stands to provide PWC
26 with a generous revenue stream from service reconnection fees"⁴⁴. And while the Company has backed
27 away from using a similar plan for EVP in the current rate case due to Tom's intervention, this injurious
28 curtailment plan **was** used on the ratepayers in MdC since September 28, 2010.
29

30 **MISREPRESENTATION #4:**

31 Water hauling continued throughout the summers of 2011, 2012 & 2013, but now at the
32 expense of the ratepayers in MdC, with great hardship endured by them, as stated by MdC resident
33 Richard Burt⁴⁵ and others that gave Public Comment at the Phase 1 Hearing⁴⁶. There is no evidence that

³⁹ See Exhibit A-17, Exhibit C, Stephen D. Noel letter to Bob Hardcastle, pages 2-3.

⁴⁰ See Exhibit S-1, Exhibit A.

⁴¹ See testimony of Thomas Bremer at Phase 2 Hearing on 02/07/14, Document #151334, page 111/237, lines 6-19. Also available @ 2:16:49 - 02:17:40 of the archived video.

⁴² See Exhibit TB-4, January 23, 2014 Filing, Attachment 1, Page 3. (Page 7/23)

⁴³ See Exhibit TB-4, January 23, 2014 Filing, Attachment 1, pages 3 & 4 (response to Data request 1.10).

⁴⁴ See Exhibit TB-4, January 23, 2014 Filing, Attachment 1, page 8. (Page 12/23)

⁴⁵ See testimony of Richard Burt at Phase 2 Hearing on 02/05/14, Document #151329, page 218/236, lines 23-25 and page 219/236, lines 1-6. Also available @ 04:39:00 - 04:46:00 of the archived video.

⁴⁶ See testimony of Bobby Jones at Phase 1 Hearing on 09/25/13, Document #148254, pages 14, 15 & 16, lines 1-10 and testimony of Lois Jones at Phase 1 Hearing on 09/25/13, Document #148254, pages 16, lines 11-25, and page

1 any efforts were made by PWC to mitigate the damages to the ratepayers of MdC during these difficult
2 3 years. PWC passed along approximately \$40,000 worth of water hauling costs to the people of MdC
3 in 2012.⁴⁷ And even after PWC was sold to JW Water Holdings around June 1, 2013, the Company
4 continued to haul water to MdC at an expense of over \$88,000 during summer 2013, "the worst year
5 yet".⁴⁸ Mr. Williamson testified that he did not do any cost/benefit analyses to evaluate various
6 solutions to solving the water shortages⁴⁹. He testified that Mr. Hardcastle did so, but was not able to
7 provide any specifics about what Mr. Hardcastle had evaluated, but stated that "**a plurality of folks out
8 there like the idea of having the Cragin water**"⁵⁰. The Docket of this case (as of 2/4/14) shows at least
9 93 letters and comments posted by ratepayers with 92 opposed and 1 in favor of the current proposals.
10 There is no evidence to support Mr. Williamson's testimony that a "plurality of folks out there like the
11 idea of having the Cragin water". In fact, Exhibit KMR-6 has an attachment labeled KMR-M that shows
12 Mr. Hardcastle did not have the support of a majority of the households in MdC for the Cragin water
13 solution when a vote was tallied in October 2011 (after the first painful summer of water hauling
14 exercises were paid for by MdC households).

15
16 **CASE SUMMARY CONTINUATION:**

17 Mr. Williamson testified that he did not examine the 7 wells in MdC to evaluate why they are
18 underperforming so badly, nor did he know if the former owner did.⁵¹ There remains no evidence that
19 PWC has made any attempts to resolve the claimed water shortages in MdC via any other solution but
20 water hauling, yet other less-expensive solutions existed. The evidence shows that PWC has been
21 expressing their interest in the Cragin Reservoir water since April 2008⁵². Yet PWC has been less than
22 forthcoming to their ratepayers about their intentions for Cragin water supplies or the costs associated.
23 KMR has testified that she was not informed by PWC of any water shortage issues in MdC prior to
24 receipt of her Public Notice on September 20, 2013⁵³. Only through diligent research and study of
25 documents submitted during the rate case has Intervenor KMR been able to sort out these details,
26 which are documented extensively in Exhibit KMR-5 (pages 4-7), Exhibit KMR-2 (pages 7-8) and Exhibit
27 KMR-1 (pages 3 & 4). KMR testified as to the reasons for her growing distrust for the Company's story⁵⁴
28 over the course of this case. She continues to assert that ratepayers from the other 7 communities
29 outside of MdC should not be asked to pay for any portion of the TOP/MdC infrastructure project or any

17, lines 1-3, and testimony of J. Stephen Gehring at Phase 1 Hearing on 09/25/13, Document #148254, page 26, lines 14-25 and pages 27, 28 & 29, lines 1-20. Also available via the archived video of the Phase 1 Hearing on September 25, 2013 @ 00:10:20 - 00:15:15 and 00:28:42 - 00:33:24.

⁴⁷ See Exhibit A-15, Rejoinder Testimony of Jason Williamson, page 14, lines 22-23.

⁴⁸ See Exhibit A-14, Rebuttal Testimony of Jason Williamson, page 9, lines 17 & 18.

⁴⁹ See Jason Williamson testimony at Phase 2 Hearing on 02/05/14, Document #151329, page 16/236, lines 22-25 and page 17/236, line 1. Also available @ 00:12:41 - 00:12:56 of the archived video.

⁵⁰ See Jason Williamson testimony at Phase 2 Hearing on 02/05/14, Document #151329, page 17/236, lines 2-17. Also available @ 00:13:11 - 00:13:50 of the archived video.

⁵¹ See Jason Williamson testimony at Phase 2 Hearing on 02/05/14, Document #151329, page 21/236, lines 6-11. Also available @ 00:21:00 - 00:21:20 of the archived video.

⁵² See Exhibit KMR-4, attached Exhibit KMR-H.

⁵³ See testimony of Kathleen M. Reidhead at Phase 2 Hearing on 02/07/14, Document #151334, page 15/237, lines 3-6. Also available at 00:09:30 - 00:09:50 of the archived video.

⁵⁴ See testimony of Kathleen M. Reidhead at Phase 2 Hearing on 02/07/14, Document #151334, page 50/237, lines 17-25 and pages 51-61/237, lines 1-23 on page 61. Also available @ 01:05:00 - 01:11:07 of the archived video.

1 future costs associated with delivery of water from the Cragin Reservoir to MdC, as they will receive no
2 benefit from it.⁵⁵

3
4 **MISREPRESENTATION #5:**

5 Ratepayers from the other 7 communities outside of MdC have been told that they would not
6 be asked to pay for any part of the TOP/MdC pipeline project⁵⁶. However, that is a half-truth at best, as
7 the Phase 1 Decision issued by the ACC has adopted the Staff Report, which includes the following
8 language, "That the Commission affirm in the Phase 1 Order its intent to process PWC's pending rate
9 case prior to the end of 2014, with a final Decision resulting in a debt service coverage ("DSC") ratio of
10 1.2 or greater for the resulting WIFA loan approval."⁵⁷ That revenue is currently being sought from all 8
11 of the systems served by PWC, as the rate design includes only one consolidated rate structure for all 8
12 water systems and that has now been agreed to by Staff and PWC. The rate design must provide
13 adequate revenue to cover that DSC ratio, as required by the Phase 1 Decision.

14
15 Further, PWC witness Thomas Bourassa confirmed his pre-filed testimony from Exhibit A-8, pg.
16 18, lines 6-10, that the debt for that project may be embedded in base rates at the next rate case⁵⁸,
17 which is recommended be filed by June 30, 2017⁵⁹. During the Phase 2 Hearings, Staff witness Crystal
18 Brown also reiterated the same possibility⁶⁰. This is contrary to prior assurances given, such as the
19 clarification given to the Commissioners at the Open Meeting on October 1, 2013 stating that ratepayers
20 outside of MdC would not be asked to cover that debt⁶¹. So PWC and the ACC are attempting to spread
21 at least some of the revenue requirements of the WIFA financing for the TOP/MdC interconnect pipeline
22 project onto all of PWC's ratepayers in the present case, and the remainder of the debt may be
23 embedded in base rates at the next rate case. This sounds like a classic case of bait-and-switch, which
24 may be a violation of A.R.S. §40-1522, §44-1211, §44-1212, §44-1376.03 or other statutes.

25
26 **MISREPRESENTATION #6:**

27 Testimony was given at the Phase 2 Hearing by Company witnesses and Staff witnesses to
28 convince the Intervenorers that the rates are being set based on "actual cost of service", but inadequate
29 detail is available to know for certain exactly what makes up many of the expenses the Company claims.
30 For example, Repairs and Maintenance is reported to be \$28,089 for 2012⁶² and accepted by Staff,
31 despite the fact that during the 2 separate Public Comment Hearings taken during the Phase 2 Hearings
32 on January 13 and February 4, 2014, numerous ratepayers gave testimony that they had not seen any

⁵⁵ See Exhibit KMR-1, page 3, lines 7-15.

⁵⁶ See Exhibit KMR-2, page 7, lines 16-40 and page 8, lines 1-5.

⁵⁷ See Exhibit S-5, page 10, lines 18-20.

⁵⁸ See Thomas Bourassa testimony at the Phase 2 Hearing on 02/05/14, Document #151329, page 205/236, lines 9-25, page 206/236, lines 1-25 and page 207/236, lines 1-15. Also available @ 04:22:20 - 04:26:25 of the archived video.

⁵⁹ See Exhibit S-16, Page 10, lines 1-2.

⁶⁰ See Crystal Brown testimony at the Phase 2 Hearing on 02/10/14, Document #151335, page 35/202, lines 1-8. Also available @ 44:29 - 50:30 of the archived video.

⁶¹ See KMR-2, page 7, lines 16-40 and page 8, lines 1-5.

⁶² See Exhibit S-16, Supplemental Surrebuttal Schedule CSB-7.

1 improvements in their systems in many years⁶³. Intervenor Suzanne Nee evaluated PWC's Repairs &
2 Maintenance costs claimed since 2001.⁶⁴ There were very few expenses noted during 2001-2007, with
3 the exception of one year, 2005. However, in 2008 through 2012 the Repairs and Maintenance costs
4 grew significantly and remained substantial. The Miscellaneous Expenses also grew substantially over
5 this same period of time, 2008-2012. This is highly questionable and should be viewed with suspicion.
6 It is notable that 2008 is when Mr. Hardcastle began expressing his interest in Cragin water supplies and
7 that is when expenses of the Company are claimed to have begun increasing substantially as well.

8
9 **MISREPRESENTATION #7:**

10 Additionally, Corporate Office Expense Allocation is described by Staff witness Crystal Brown as
11 "management, strategic planning, obtaining of financial resources to run the Company, Customer
12 Service, IT, Human Resources, Legal and other types of overhead needed to run the Company"⁶⁵. For
13 some odd reason, Staff's view of "acceptable" Corporate Office Allocation expenses has changed over
14 the course of this case⁶⁶, even though the circumstances of the case have not changed. For example,
15 the Corporate Office Allocation expense was increased by \$19,441, from \$154,462 at Staff's Direct
16 Testimony on November 15, 2013⁶⁷ to \$173,903 at Staff's Supplemental Surrebuttal Testimony on
17 January 24, 2014⁶⁸. This is a very high level of Corporate Office Allocation for a small Company
18 operating 8 water systems with only 1,114 ratepayers and an unusual increase late in the case. Also,
19 Staff allowed an adjustment to the Rate Base for Accumulated Deferred Income Taxes ("ADIT") that
20 resulted in a higher Total Rate Base of \$504,684⁶⁹ at Supplemental Surrebuttal Testimony over Staff's
21 previous Direct Testimony Total Rate Base of \$425,129⁷⁰. Again, another unusual increase late in the
22 case. ***As per Crystal Brown's testimony at the Phase 2 Hearing, the only way to know whether the***
23 ***ADIT asset is overstated or understated is by the outcome of a thorough examination⁷¹, which has not***
24 ***been conducted.*** The reason for these adjustments was stated to be because the Company had poorly
25 performed their duties in the past (as evidenced by a history of customer complaints and not securing all
26 tax documents necessary to provide for an audit of ADIT) and may need extra assistance to do better in
27 the future⁷². This is patently unfair to the ratepayers. It excuses the Company for poor performance
28 and rewards them for it, which will only encourage more of the same in the future.

29
30
31
⁶³ See Document #151043, pages 5-23/33 and Document #151328, pages 8-18/214. Also available via archived
videos of these Hearings on January 13, 2014 and February 4, 2014.

⁶⁴ See Exhibit SN-5, Exhibit A.

⁶⁵ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 42/202, lines 1-6.
Also available @ 01:13:30 - 01:14:30 of the archived video.

⁶⁶ See Exhibit S-16, page 5, lines 2-7. Also, see testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14,
Document #151335, page 50/202, lines 5-13.

⁶⁷ See Exhibit S-14, Schedule CSB-11, line 7.

⁶⁸ See Exhibit S-16, page 6, lines 1-6.

⁶⁹ See Exhibit S-16, Schedule CSB-4.

⁷⁰ See Exhibit S-14, Schedule CSB-4.

⁷¹ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 52/202, lines 16-
23. Also available @ 01:31:47 - 01:32:47 of the archived video.

⁷² See Exhibit S-16, page 4, lines 1-15 and 22-26 and page 5, lines 1-7.

1 **MISREPRESENTATION #8:**

2 Further, Staff changed the rate of return ("ROR") from 6.4% at Direct Testimony on November
3 20, 2013⁷³ to 9.0% at Supplemental Surrebuttal Testimony on January 24, 2014⁷⁴. Staff witness John
4 Cassidy gives a lengthy explanation at Exhibit S-12, pages 2 & 3 submitted on December 20, 2013 to
5 defend the 6.4% ROR and that "its collective recommendations in the Company's two consolidated
6 filings are very reasonable when viewed within the unique and extraordinary rate request processing
7 environment dictated and delineated by Payson Water's petition." It is highly peculiar, then, that Staff
8 changed numerous variables at the last stage of the case, including the ROR, Corporate Office Allocation
9 expenses and Rate Base adjustment for ADIT asset at Supplemental Surrebuttal Testimony. It appears
10 that these modifications are made to obscure the revenue level that is required to assure compliance
11 with the Phase 1 Decision, DSC of 1.2 or greater. ***Despite Staff's testimony*** that rates are set upon
12 expenses identified in the Company's Income Statement and based upon the rate base times ROR⁷⁵, in
13 these "unusual" circumstances of having to comply with the Phase 1 Decision, the DSC of 1.2 or greater
14 ***was a factor*** and so there appears to be manipulation of the variables late in this case in order to assure
15 compliance with that Phase 1 Decision and generate enough revenue to cover it while having it appear
16 inconspicuous. ***The Phase 1 Decision polluted the process of rate setting in Phase 2.*** The DSC of 1.2 or
17 greater would require at least \$330,000 of additional revenue (\$275,000 TOP/MdC pipeline cost X 1.2 =
18 \$330,000). The additional revenue that Staff and PWC have agreed upon in Phase 2 is \$289,731⁷⁶, which
19 obviously falls short of the \$330,000 target. Accordingly, it is reasonable to conclude that the late
20 manipulations of Corporate Office Expense Allocation, rate base adjustment for ADIT asset and ROR
21 increase from 6.4% to 9.0% were intended to muddle the matter while still providing adequate revenue
22 in the form of additional expense allocation, higher rate base and higher ROR without showing an exact
23 revenue increase of \$330,000. KMR was stopped from asking additional questions about this aspect
24 during the Phase 2 Hearing⁷⁷. This ***violated her rights to due process for the second time*** during this
25 case. This is why the Commission must rescind that Phase 1 Decision issued in the case, as per A.R.S.
26 §40-252, and re-evaluate the financial records of the Company from 2001-2013 before setting new
27 rates. An independent audit of the Company's books is in order, based on the number of
28 inconsistencies in data provided by the Company, as noted throughout the evidence of the case.

29
30 **PWC DECEPTION #5:**

31 There is an abundance of evidence that indicates PWC has taken imprudent steps that resulted
32 in a decline in the financial health of the Company⁷⁸. Not only are there questionably high expenses
33 reported for the Test Year 2012, but the paying of a Dividend of \$352,206⁷⁹ to a former shareholder in
34 2013 stands out as an egregious violation of the public trust. Ms. Brown testified that if that money had

⁷³ See Exhibit S-10, page 34, lines 4-11.

⁷⁴ See Exhibit S-13, page 5, lines 11-17.

⁷⁵ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 55/202, lines 8-13. Also available @ 01:37:00 - 01:38:05 of the archived video.

⁷⁶ See Exhibit S-16, Supplemental Surrebuttal Schedule CSB-1, line 8.

⁷⁷ See testimony of Crystal Brown at Phase 2 Hearing on 02/10/14, Document #151335, pages 29-33, specifically page 32/202, lines 10-25 & page 33/202, lines 1-7. Also available @ 46:20 - 51:10 of the archived video.

⁷⁸ See Exhibit KMR-5, attached Exhibit KMR-J.

⁷⁹ See testimony of Thomas Bourassa at the Phase 2 Hearing on 02/04/14, Document #151328, page 173/214, lines 11-25 & page 174/214, lines 1-15. Also available @ 04:11:42 - 04:14:15 of the video archive.

1 remained on the Company's books, Staff would have recommended a sharing of that gain for
2 ratemaking purposes⁸⁰. She stated that Staff has recommended this in the past and that many State
3 Commissions also do this. And while she states that she is not aware that the dividend payment violated
4 any Commission rules, regulations or law⁸¹, KMR asserts that *this cannot be known* with any certainty
5 unless a criminal investigation determines whether there was any collusion between Mr. Hardcastle and
6 Mr. Williamson at the time of the sale of the Company. If the dividend payment was negotiated and
7 agreed upon as part of the sale of the Company while the Company's story to the ratepayers is that they
8 are in a dire financial condition, then this is deceptive. For this reason (as well as others cited), she is
9 seeking a criminal investigation into the Company's activities.

10
11 **CASE SUMMARY CONTINUATION:**

12 Also, while Staff witness Crystal Brown stated that she doesn't put much reliance on Annual
13 Reports as part of her regulatory audit⁸², without taking that broader look at a Company's history of
14 expenses, an unscrupulous individual in a position of authority at a Public Service Corporation would
15 have an opportunity to defraud its ratepayers based on knowledge of the regulatory process. PWC
16 attorney Jay Shapiro stated that the E-schedules require the Company to file only 2 years previous
17 financial data and Crystal Brown acknowledged that on response to a question from Judge Nodes⁸³. For
18 example, once Mr. Hardcastle began placing his Corporate Office Allocation expenses into Miscellaneous
19 Expenses, it became impossible for anybody to see what those expenses were or how much he was
20 claiming for those expenses, as detail of Miscellaneous Expenses are not shown on Annual Reports. He
21 may have falsely increased those expenses substantially over time, as appears to be the case, based on
22 Suzanne Nee's analysis that shows the Miscellaneous Expenses grew by **591.8%** over 2001-2012⁸⁴,
23 notably increasing since 2008 (when his interest in Cragin water was first noted). Mr. Hardcastle would
24 likely know that the ACC Regulatory Section would not look at the Annual Reports⁸⁵, only conduct a
25 typical "regulatory audit" during a rate case, which would shield him from scrutiny of the books over the
26 past 13 year period of time. He would know that only the 2 years prior to the Test Year would come
27 under any scrutiny. The regulatory process is flawed and, in this case, to the possible peril of the
28 ratepayers. Based on these facts, there is additional reason to be concerned that PWC may have
29 engaged in efforts to deceive or defraud the ratepayers, which may be a violation of A.R.S. §40-1522,
30 §44-1211, §44-1212, §44-1376.03 or other statutes. For this reason (as well as others cited), she is
31 seeking a criminal investigation into the Company's activities.

32
33
⁸⁰ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 184/202, lines 1-12. Also available @ 05:28:15 - 05:37:20 of the archived video.

⁸¹ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 185/202, line 25 & page 186/202, lines 1-4. Also available @ 05:36:40 - 05:37:20 of the archived video.

⁸² See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 69/202, line 25 & page 70/202, lines 1-10. Also page 74/202, lines 11-23. Also available @ 02:06:50 - 02:10:10 of the archived video.

⁸³ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 77/202, lines 11-25 & page 78/202, lines 1-18. Also available @ 02:21:32 - 02:26:30 of the archived video.

⁸⁴ See Exhibit SN-5, Exhibit A.

⁸⁵ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, pages 78 & 79. Also available @ 02:21:32 - 02:26:30 of the archived video.

1 **CASE LAW:**

2 In *Salt River Valley Canal Co. v. Nelssen*, 10 Ariz. 9, 13, 85 P. 117, 119 (1906), the Arizona
3 Supreme Court said: "In determining what is a reasonable price to be charged for services by a public-
4 service corporation, an examination must be made not only from the point of view of the corporation,
5 but from that of the one served, also. A reasonable rate is not one ascertained *solely from considering*
6 *the bearing of the facts upon the profits of the corporation. The effect of the rate upon persons to*
7 *whom services are rendered is as deep a concern in the fixing thereof as is the effect upon the*
8 *stockholders or bondholders. A reasonable rate is one which is as fair as possible to all whose interests*
9 *are involved."* (Emphasis added.) This sentiment was cited again in *Arizona Community Action*
10 *Association v. Arizona Corporation Commission*, 123 Az 228, 599 P2d 184 (1979).

11
12 The setting of rates is alot like the water meter. The water meter doesn't know if 1 person or 6
13 people live in a household. It doesn't know if the water a household uses is for watering a garden to
14 grow food for sustenance or for washing a car. The water meter doesn't know if the water is pumped
15 from a well or hauled by a truck. The water meter is just a blunt instrument that calculates usage and
16 metes out financial consequences as the dial reaches higher levels. Likewise, the setting of rates seems
17 to be another blunt instrument wielded by the ACC. The setting of rates doesn't seem to calculate the
18 human impact. It doesn't look at the lifestyle of the people using the water or the availability of water in
19 a particular system. The setting of rates looks to generate revenue and shows interest in creating
20 efficiencies for the Company, even when the Company has performed its duties poorly in the past.
21 Bureaucrats operate by a fixed routine, without exercising careful judgment, employing practices that
22 harm the poor and the elderly, merely because the practices have been in place for over 10 years and
23 are accepted to be sound and just, despite evidence produced to the contrary. This is what the
24 ratepayers of PWC have been shown over the course of this case. But it is not too late for the ACC to do
25 the right thing. There has to be an agent for good in the world. There has to be an agent for the
26 influence of what is good and just and right.

27
28 **CONSOLIDATION OF RATES AND INVERTED TIER RATE STRUCTURE:**

29 The consolidation of rates and inverted tier rate structure proposed in this case is discriminatory
30 to the ratepayers in Gisela based upon the disproportionate share of the increase they are being asked
31 to pay. The economic consequences will be particularly severe on Gisela, the one community that
32 currently has a single tier rate structure⁸⁶. Gisela is a community that has a large number of
33 impoverished people who grow gardens for sustenance and raise livestock⁸⁷. KMR asserts that DCV is
34 also being discriminated against as outlined in *Exhibit KMR-2*, page 2 lines 10-39, page 3, lines 1-16, Page
35 8, lines 32-38 and page 9, lines 1-5 and 13-21. The communities of DCV and Gisela are in the Tonto
36 Creek water basin, which are at a much lower elevation than the other 6 systems served by PWC, hence
37 they have a hotter climate and abundant water resources are available in underground storage in this

⁸⁶ See *Exhibit S-17*, Decision 62320 issued on 02/17/2000.

⁸⁷ See testimony of Tom Bremer at the Phase 2 Hearing on 02/07/14, Document #151334, page119/237, lines 1-14. Also available @ 02:27:58 - 02:29:12 of the archived video. Also, testimony of Kathleen Reidhead at the Phase 2 Hearing on 02/07/14, Document #151334, page24/237, lines 8-21. Also available @ 002:21:25 - 00:23:10 of the archived video.

1 water basin⁸⁸. These factors are important distinctions related to water usage patterns and therefore
2 should be considered carefully before the ACC imposes a consolidated inverted tier rate structure on all
3 systems. The other 6 communities served by PWC reside in the Verde River water basin, where
4 different climate and hydro-geological conditions exist. The ratepayers in the Tonto Creek Basin should
5 not be penalized for their misfortune of being served by the same water Company that serves
6 ratepayers in the Verde River Basin. They should not be put on a "conservation" inverted tier rate
7 structure, merely because it benefits PWC with administrative efficiencies and higher revenue, yet this is
8 precisely what the ACC Staff and PWC have proposed and agreed to do. It was stated by Crystal Brown
9 that regarding rate consolidation, "the Commission weighed the costs and the benefits and found that
10 the financial viability of a small water system, in the long run, and the affordability of the rates of a small
11 water company, customers as a whole, in the long run, outweighed the lower costs that the customers
12 might pay in the relatively short run."⁸⁹ KMR argues that these other factors should outweigh any
13 administrative value achieved by consolidation of rates. One has to wonder why it doesn't carry the
14 higher weight or even possibly any weight at all. It was stated that the inverted tier rate structure is a
15 long-standing practice the ACC adopted approximately 14 years ago⁹⁰, presumably by prior
16 Commissioners, who likely had all good intentions. However, this practice appears to be **highly**
17 discriminatory based upon the facts of this case, as it has been established that rural communities may
18 be placed on these "conservation" rate structures despite the availability of abundant water resources⁹¹,
19 while metropolitan communities, like Phoenix, are not⁹². The inverted tier rate structure is
20 discriminatory in this particular case due to the differences in climate and hydro-geological conditions
21 between the Tonto Creek Basin and the Verde River Basin. Gisela's water usage is the highest amongst
22 the PWC systems⁹³, which would be expected, based on their lifestyle and due to the hotter climate, as
23 they are at the lowest elevation of all 8 systems⁹⁴. DCV is the 2nd highest water user in the PWC
24 systems⁹⁵ and is also at the 2nd lowest elevation of all 8 systems⁹⁶. It is not a surprising coincidence that
25 both Gisela and DCV are the highest water users because of the hotter climate of the Tonto Creek Basin.
26 And it is unreasonable to economically sanction users in the Tonto Creek Basin at the same consumption
27 tiers as those in the cooler Verde River Basin, where water resources are also more scarce. Therefore,
28 KMR asks that a separate rate structure be imposed for DCV and Gisela that is just and reasonable based
29 on actual costs of service for those systems and the facts of this case related to climate and hydro-
30 geology conditions. If approved, the proposed consolidation of rates and inverted tier rate structure for
31 all systems ***in this particular case*** will violate A.R.S. §40-203.
32

⁸⁸ See Exhibit KMR-2, attached Exhibit KMR-1.

⁸⁹ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 17/202, lines 12-18. Also available @ 00:20:42 - 00:21:25 of the archived video.

⁹⁰ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 16/202, lines 24-25 & page 17/202, lines 1-8. Also available @ 00:18:50 - 00:21:25 of the archived video.

⁹¹ See testimony of Crystal Brown at the Phase 2 Hearing on 02/10/14, Document #151335, page 63/202, lines 18-25 & page 64/202, lines 1-14. Also available @ 01:53:00 - 01:56:50 of the archived video.

⁹² See Exhibit KMR-2, attached Exhibit KMR-9.

⁹³ See Exhibit S-7, Page 11.

⁹⁴ See Exhibit KMR-2, attached Exhibit KMR-8.

⁹⁵ See Exhibit S-7, Page 11.

⁹⁶ See Exhibit KMR-2, attached Exhibit KMR-8.

1 **CONCLUSION:**

2 It is reasonable to conclude that a small water Company, like PWC, would face obstacles gaining
3 support from its ratepayers for a large rate increase tied to the high cost of Cragin water unless growth
4 demanded it or a water shortage crisis existed. There is now substantial reason to doubt PWC's claimed
5 crisis in MdC is legitimate based upon the timeline of events and the numerous irregularities in data
6 documented in the Phase 2 evidence of this case⁹⁷. For this reason, KMR is asking for a criminal
7 investigation into this matter. The evidence shows the actions of PWC may have been intended to
8 deceive or defraud the ratepayers in pursuit of Cragin Reservoir water resources and a criminal
9 investigation is warranted.

10
11 In the end, it is very concerning that the ACC Staff did not regulate PWC's business activities to a
12 level that would assure the ratepayers transparency and a just and reasonable rate, as required by A.R.S.
13 §40-361. There is the appearance of serious improprieties by PWC in the record of this case. There are
14 far too many accounting and data irregularities noted in the evidence to accept the data provided by the
15 Company as sound and used by ACC Staff in making the rate design. There is also evidence of a flawed
16 regulatory process and numerous mistakes made by the ACC based on lack of scrutiny on the Company's
17 data. The ratepayers' rights to due process were violated when a Decision was rendered that would
18 impact their rates, without them given an opportunity to participate in the process. Therefore, the
19 Phase 1 Decision #74175 should be rescinded based upon documented deceptive practices used to
20 achieve it. The financial records of the Company should be examined via an independent audit from
21 2001-2013 before any new rates are made. And the ACC should contact the Attorney General and
22 cooperate with a criminal investigation into the Company's practices, as required per A.R.S. §40-421, to
23 assure that the ratepayers are not being deceived and defrauded. The ACC should abandon the current
24 Staff proposal and instead order cost of service studies be conducted and that just and reasonable rates,
25 based on actual cost of service, be approved for each of the communities with similar costs and similar
26 hydro-geological and climate conditions, in accordance with A.R.S. §40-361.

27
28 Respectfully submitted this 10th day of March, 2014.

29
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⁹⁷ See Exhibit KMR-5, attached Exhibit KMR-J.

1 **ORIGINAL** and thirteen (13) copies
2 of the foregoing were filed this 10th
3 day of March, 2014 with:

4
5 Docket Control
6 Arizona Corporation Commission
7 1200 W. Washington Street
8 Phoenix, AZ 85007
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10 **COPY** of the foregoing was mailed
11 this 10th day of March, 2014 to:

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